

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-220367.3 **DATE:** April 7, 1986
MATTER OF: Ariston Prepared Foods, Inc.

DIGEST:

A protest file that was closed because the protester's comments on the agency report were not received within 7 working days after the protester received the report, as required by the Bid Protest Regulations, will not be reopened where the protestor simply relied on the mail for timely delivery of comments and delivery in fact was not timely made.

Ariston Prepared Foods, Inc. requests reconsideration of our dismissal of its protest under request for proposals (RFP) No. DABT35-85-R-0147, issued by the Department of the Army. We dismissed Ariston's protest because Ariston failed to comply with our Bid Protest Regulations' requirement that the protester, within 7 working days after receiving the agency's report on the protest, either: 1) file comments on the report; 2) file a statement requesting that the case be decided on the existing record; or 3) request an extension for submitting comments. 4 C.F.R. § 21.3(e) (1985). Ariston contends that it mailed our Office a statement requesting that we consider the protest on the existing record and requests that we reopen the file. We find no basis to reconsider the dismissal.

Our records show that after our receipt of the agency report, we received no communication from Ariston concerning the protest until the filing of its request that we reopen the file. Although Ariston argues that it mailed a statement to our Office expressing continued interest in the protest, the term filed means "receipt of the protest submission in the General Accounting Office"; a protester makes use of the mails at its own risk, and any delay or failure in the delivery of the mail does not provide a basis for waiving our Bid Protest Regulations. California Short Hand Reporting--Request for Reconsideration, B-221173.2, Feb. 18, 1986, 86-1 CPD ¶ ____.

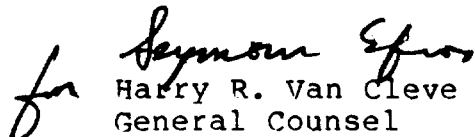
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Both our published regulations and our notice to Ariston acknowledging its protest expressly notified Ariston that under 4 C.F.R. § 21.3(e) the protester, within 7 working days of receipt of the agency report, had to file written comments or advise our Office to decide the protest on the existing record. The acknowledgment further warned that unless we heard from the protester by the seventh day after the report was due, we would close our file. It therefore was incumbent upon the protester to exercise the due diligence and care necessary to meet the requirements.

Our regulations are designed to establish effective and equitable standards both so that parties have a fair opportunity to present their cases and so that protests can be resolved in a speedy manner. Bannum Enterprises--Reconsideration, B-221274.2, Feb. 25, 1986, 86-1 CPD ¶ ____. We require a statement of continued interest in pursuing a protest because once protesters read the agency report they sometimes change their minds about the merits of their protests, and thus the requirement for an expression of continued interest prevents unduly delaying the procurement process while this Office would be preparing a decision the protester was no longer interested in receiving. Id.

Since Ariston had the opportunity to express continued interest in the protest, our reopening the file would be inconsistent with our purpose of providing a fair opportunity for protesters to have their objections considered without unduly disrupting the procurement process.

The request for reconsideration is denied.


for Harry R. Van Cleve
General Counsel